

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
TYLER DIVISION**

BLUE SPIKE, LLC	§	Civil Action No. 6:12-CV-499 MHS
<i>Plaintiff,</i>	§	
	§	LEAD CASE
v.	§	
	§	
TEXAS INSTRUMENTS, INC.	§	
<i>Defendants</i>	§	

BLUE SPIKE, LLC,	§	Civil Action No. 6:12-CV-576 MHS
<i>Plaintiff,</i>	§	
v.	§	CONSOLIDATED CASE
AUDIBLE MAGIC CORPORATION,	§	
FACEBOOK, INC., MYSPACE, LLC,	§	
SPECIFIC MEDIA, LLC,	§	
PHOTOBUCKET.COM, INC.,	§	
DAILYMOTION, INC.,	§	
DAILYMOTION S.A., SOUNDCLOUD,	§	
INC., SOUNDCLOUD LTD., MYXER,	§	
INC., QLIPSO, INC., QLIPSO MEDIA	§	
NETWORKS LTD., YAP.TV, INC.,	§	
GOMISO, INC., IMESH, INC.,	§	
METACAFE, INC., BOODABEE	§	
TECHNOLOGIES, INC., TUNECORE,	§	
INC., ZEDGE HOLDINGS, INC.,	§	
BRIGHTCOVE INC.,	§	
COINCIDENT.TV, INC., ACCEDO	§	
BROADBAND NORTH AMERICA,	§	
INC., ACCEDO BROADBAND AB,	§	
AND MEDIAFIRE, LLC	§	
<i>Defendants.</i>	§	

BLUE SPIKE, LLC,	§	Civil Action No. 6:12-CV-570 MHS
<i>Plaintiff,</i>	§	
v.	§	CONSOLIDATED CASE
	§	
WIOFFER, LLC	§	
<i>Defendant.</i>	§	

**DECLARATION OF VANCE IKEZOYE IN SUPPORT OF DEFENDANT
AUDIBLE MAGIC CORPORATION'S AND ITS CUSTOMERS' MOTION TO
TRANSFER VENUE TO THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF CALIFORNIA UNDER 28 U.S.C. § 1404(a)**

I, Vance Ikezoye, declare under penalty of perjury that the following is true and correct:

1. I am Chief Executive Officer at Audible Magic Corp. (“Audible Magic”).

I have personal knowledge of the facts set forth in this declaration, or access to Audible Magic corporate information and records allowing me to confirm these facts. I submit this declaration based upon my knowledge of the corporate structure and operations of Audible Magic, and my investigation of the location of witnesses and evidence related to the systems Plaintiff Blue Spike, LLC (“Blue Spike”) appears to be referencing as accused of infringement in its Complaint. If called as a witness, I could testify competently to these facts under oath.

2. Blue Spike’s Complaint alleges that Audible Magic’s “Live TViD, SmartSync, CopySense, SmartID, Audio and automated content recognition (ACR) digital fingerprint-based software, systems, and technology” purportedly infringe four patents that the complaint states relate generally to the idea of “content recognition.” In this declaration, these are referred to as the “Audible Magic accused products.”

3. I have made efforts to identify the persons most knowledgeable about the Audible Magic accused products and the location of evidence that would be most relevant to them. As discussed below, the San Francisco and Silicon Valley area, in the Northern District of California, is a much more accessible and convenient forum than this Court for Audible Magic’s witnesses and its documents.

4. Audible Magic is and has always been headquartered in Los Gatos, California, in the San Francisco Bay Area.

5. Decisions related to Audible Magic’s overall business, including the most significant sales, marketing and engineering decisions related to the Audible Magic accused products, are made by senior executives all of whom work at Audible Magic’s facilities in Los

Gatos, California.

6. The Audible Magic accused products in the complaint in the above-referenced action were developed at Audible Magic and its predecessor companies in Los Gatos, California or in Berkeley, California, under the supervision of employees of Audible Magic who work in Los Gatos, California or in Berkeley, California.

7. The Audible Magic accused products comprise software and hardware systems for the identification of digital content, based on Audible Magic's proprietary techniques. Audible Magic and its predecessor companies are long-standing participants in the field of content identification. The accused Audible Magic products are sold nationwide.

8. Audible Magic has no operations, employees or property in Texas.

9. All of the engineers involved with the development of the Audible Magic accused products have at all times worked at Audible Magic in Los Gatos, California and Berkeley, California.

10. All of the documents relating to the development of the Audible Magic accused products are located at Audible Magic in Los Gatos, California and Berkeley, California. There are no documents relating to the development of Audible Magic products located in Texas.

11. All of the source code repositories, containing sensitive, trade-secret source code relating to the Audible Magic accused products, are located in Los Gatos, California and Berkeley, California.

12. Audible Magic employees responsible for entering into contracts with customers for the Audible Magic accused products are or have been at all times located in either Los Gatos, California or Berkeley, California. None of them are located in Texas. Audible Magic's contracts with its customers for the Audible Magic accused products were entered into and negotiated by Audible Magic in Los Gatos, California. Audible Magic's customers directed

their interactions and copies of the agreements to Audible Magic employees in Los Gatos, California.

13. The Audible Magic employees responsible for operating the software, servers and databases that relate to the Audible Magic accused products used by its customers, and those employees providing customer support for such products, are located in Los Gatos, California. Such servers and databases are all located in Los Gatos, California and at a co-location facility in San Jose, California. No such employees, servers or databases are located in Texas. Documents relating to accounting, sales, and marketing of the Audible Magic accused products are located in Los Gatos, California.

14. It is my understanding that customers of Audible Magic's technology have been accused by Blue Spike in this lawsuit based on Audible Magic's technology. Such customers named in the lawsuit are Facebook, Inc., Myspace LLC, Specific Media LLC, Photobucket.com, Inc., Dailymotion, Inc., Dailymotion S.A., Soundcloud, Inc., Soundcloud Ltd., Myxer, Inc., Qlipso Media Networks, Ltd., Yap.tv, Inc., GoMiso, Inc., iMesh, Inc., Metacafe, Inc., Boodabee Technologies, Inc., Zedge Holdings, Inc., Brightcove, Inc., Coincident.tv, Inc., Accedo Broadband North America, Inc., Accedo Broadband AB, MediaFire, LLC, WiOffer LLC and CBS Interactive, Inc.

15. Audible Magic provides content identification services to customers, which services are managed and hosted by Audible Magic on its computer servers and in its network operations center in Los Gatos, California and San Jose, California. As part of their agreements with Audible Magic, Audible Magic's customers utilize or access servers, databases, and software located in and/or originating from Audible Magic in Los Gatos, California. Customers have no access to, and no ability to alter, Audible Magic's proprietary source code used to run Audible Magic's content identification services.

16. Audible Magic technical and business personnel in Los Gatos, California interacted with customers to obtain the agreements between the customers and Audible Magic, and with regard to technical aspects of the Audible Magic technology.

17. Evidence and witnesses regarding Audible Magic's predecessor companies Muscle Fish, LLC and Wired Air LLC are and were located in Los Gatos, California and Berkeley, California. Muscle Fish LLC operated in Berkeley California since 1992. Prior to forming Muscle Fish, the developers of Audible Magic's accused products worked at Yamaha Music Technologies in Larkspur Landing, California, in the San Francisco Bay Area. Third party witnesses who interacted with and did business with Muscle Fish LLC and Wired Air LLC are located in the San Francisco Bay Area. A significant volume of very old paper documents, electronic documents, backup tapes and code regarding the history of Audible Magic and its predecessor companies are located in Los Gatos, California and Berkeley, California. The original and continuing developers of the Audible Magic accused products, engineers Erling Wold, Doug Keislar, Thom Blum and Jim Wheaton, reside in the San Francisco Bay Area. These individuals possess relevant knowledge concerning the operation and design of the Audible Magic accused products.

18. Evidence regarding interactions between Mike Berry, Scott Moskowitz and Blue Spike, Inc., listed on the face of Blue Spike's patents, and employees of Audible Magic's predecessor company Muscle Fish, LLC are located in Los Gatos, California and Berkeley, California. Mike Berry was located in Oakland, California, while contracting for Muscle Fish, LLC in the late 1990s. Moskowitz, Berry and Blue Spike, Inc. had interactions with Muscle Fish, LLC, on behalf of Blue Spike, Inc., in the late 1990s.

19. The San Francisco Bay Area has historically contained a high concentration of research institutions and companies regarding content recognition, audio

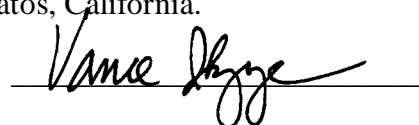
engineering, electronic musical instruments, musical applications of computers and digital content technologies. Just a few illustrative examples include: (1) The Center for Computer Research in Music and Acoustics at Stanford University (<https://ccrma.stanford.edu>), is located in Palo Alto, California, where one of the developers of the Audible Magic accused products conducted research and obtained a degree in the early 1990s, (2) the Electrical Engineering & Computer Science department at the University of California at Berkeley, where one of the developers of Audible Magic's technology conducted research and obtained degrees from this institution in the late 1980s, (3) The International Computer Music Association (<http://www.computermusic.org>), which facilitates research regarding computer music applications and technologies, and expressed interest in the technology of Audible Magic's predecessor, Muscle Fish LLC, is located in San Francisco, California, (4) Interval Research, which was a laboratory and technology incubator in Palo Alto, California, carried out research and development regarding content analysis and recognition in the 1990s and expressed interest in the technology of Audible Magic's predecessor, Muscle Fish LLC, (5) IBM's Almaden Research Center, which was a key research lab of IBM Corporation located in San Jose, California, carried out research and development regarding audio and video analysis, segmentation, classification and semantic audio retrieval in the 1990s, and expressed interest in the technology of Audible Magic's predecessor, Muscle Fish LLC, (6) FX Palo Alto Laboratory, Inc., is a leading multimedia research laboratory established by Fuji Xerox Co., located in Palo Alto, California. It carried out research regarding identification, organization and access of audio and video data in the 1990s, and expressed interest in the technology of Audible Magic's predecessor Muscle Fish LLC, (7) Illustra Information Technologies and Informix Software, Inc. were companies in the San Francisco Bay Area carrying out research regarding identification, organization and access of audio and video data in the 1990s, and expressed interest in the

technology of Audible Magic's predecessor Muscle Fish LLC. More generally, many of the most significant audio engineering companies have been centered in the San Francisco Bay Area and Silicon Valley, including Apple, Napster, Dolby, Intel, Pandora, Creative Labs, Roxio, Digidesign, Liquid Audio and Thomson, as well as many other startups in this space. It is my opinion that there is a local industry and strong local interest in content engineering technologies in the San Francisco Bay Area and Silicon Valley.

20. Companies directly or indirectly involved with content recognition, that have been located or founded in the San Francisco Bay Area have included Rovi (formerly known as Macrovision), Xift, Gracenote, Moodlogic, Zeitera, Shazam, Vobile, Cognitive Networks, Soundhound, Free Stream Media, Auditude, Irdeto, Bay TSP, Vercury, Attributor, Bulldog United, Media-Sync/Nielsen and Virage/Autonomy, Yahoo and Google, among others.. It is my opinion that there is a local industry and strong local interest in content recognition technologies in the San Francisco Bay Area and Silicon Valley.

I declare under penalty of perjury under the laws of the United States of America that the foregoing facts are true and correct based on my own personal knowledge.

Executed on May 15, 2013 in Los Gatos, California.


Vance Ikezoye